

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Jeffery Dale Tolliver, #13-12613,)	C/A No.: 1:16-3889-JMC-SVH
)	
Plaintiff,)	
)	
vs.)	REPORT AND RECOMMENDATION
)	
Spartanburg County Detention Facility,)	
)	
Defendant.)	
)	

Jeffery Dale Tolliver (“Plaintiff”), proceeding pro se and in forma pauperis, is an inmate incarcerated at the Spartanburg County Detention Facility (“SCDF”). He brings this action pursuant to 42 U.S.C. § 1983 alleging his incarceration in SCDF violates his constitutional rights. Pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Local Civ. Rule 73.02(B)(2)(e) (D.S.C.), the undersigned is authorized to review such complaints for relief and submit findings and recommendations to the district judge. For the reasons that follow, the undersigned recommends that the district judge dismiss the complaint in this case without prejudice and without issuance and service of process.

On February 2, 2017, the Honorable J. Michelle Childs, United States District Judge, granted Plaintiff’s motion to amend his complaint. [ECF No. 15]. Judge Childs’ order directed Plaintiff to file an amended complaint by February 17, 2017. The order specifically advised Plaintiff that his claim would be subject to dismissal if he failed to file an amended complaint by February 17, 2017.

Notwithstanding the specific warning and instructions in Judge Childs' order, Plaintiff has failed to file an amended complaint. As such, it appears to the court that he wishes to abandon this action. Based on the foregoing, the undersigned recommends this action be dismissed with prejudice for failure to prosecute. *See Davis v. Williams*, 588 F.2d 69, 70 (4th Cir. 1978); Fed. R. Civ. P. 41(b).¹

IT IS SO RECOMMENDED.



February 22, 2017
Columbia, South Carolina

Shiva V. Hodges
United States Magistrate Judge

**The parties are directed to note the important information in the attached
“Notice of Right to File Objections to Report and Recommendation.”**

¹ If the district judge accepts this recommendation, Plaintiff's motion for summary judgment [ECF No. 12] will be rendered moot.

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *see* Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk
United States District Court
901 Richland Street
Columbia, South Carolina 29201

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).